COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 13 June 2014

Secret
CPT (2014) 09

REPORT TO THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS ON THE AD HOC VISIT TO THE NETHERLANDS CARRIED OUT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

FROM 16 TO 18 OCTOBER 2013

Adopted on 5 March 2014

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Copy of the letter transmitting the CPT's report

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Strasbourg, 13 June 2014

Dear Professor Kuijer,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of the Kingdom of the Netherlands drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its ad hoc visit to the Netherlands from 16 to 18 October 2013. The report was adopted by the CPT at its 83rd meeting, held from 3 to 7 March 2014.

The various recommendations, comments and requests for information formulated by the CPT are listed in the Appendix to the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Dutch authorities to provide **within three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Dutch authorities to provide, in the above-mentioned response, reactions and replies to the comments and requests for information.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Lətif Hüseynov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out an ad hoc visit to the Netherlands from 16 to 18 October 2013. The purpose of the visit was to examine the treatment of foreign nationals during a removal operation by air and the conditions under which the removal operation took place. The monitoring concerned a charter flight organised by the Repatriation and Departure Service (DT&V) of the Ministry of Security and Justice between Rotterdam and Lagos (Nigeria), scheduled for departure on 17 October 2013. The flight was part of the Joint Return Operations (JRO) coordinated and co-financed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) for 2013. It involved, in addition to the Netherlands (the "Organising State"), the following "Participating Member States" (PMS): Bulgaria, Germany, Slovenia and Spain.[1]

2. The visit was carried out by three members of the CPT: Marija DEFINIS-GOJANOVIC (Head of Delegation), Maïté DE RUE and Jari PIRJOLA. They were supported by Fabrice KELLENS, Deputy Executive Secretary of the CPT.

B. Consultations held by the delegation

3. On 16 October 2013, the delegation held fruitful consultations with Maarten HILLEBRANDT, Head of Division, and Sudesh SUKHRAJ, Supervisor Special Departures, of the DT&V, as well as with Major Robin OOST, Headquarters of the Royal Military Constabulary (KMAR); First Lieutenant John DE LEEUW, Commander of the Repatriation Department at Schiphol KMAR District; and Adjutant Under-Officer M. VAN DER VLIES, Operational Commander KMAR Ground Team at Rotterdam The Hague Airport ("Rotterdam Airport"). The delegation also had talks with the Director and health-care staff on duty at Rotterdam Detention Centre.[2]

On 17 October 2013, the delegation also met two representatives of the Commission for the Integral Supervision of Return (CITT), as well as two members of the Inspectorate of the Ministry of Security and Justice (IV&J).

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[1] Greece and Portugal (counting for 6 seats) were originally listed as PMS, but cancelled their participation at the last minute.

[2] Rotterdam Detention Centre was briefly visited by the CPT in October 2011 (CPT/Inf (2013) 21).

C. Cooperation between the CPT and the authorities of the Netherlands

4. The level of cooperation received from the authorities and, in particular, from the KMAR and DT&V staff, was exemplary.[3] The delegation had access to all places of deprivation of liberty it wished to visit, in particular Rotterdam Detention Centre and Amsterdam Prison Psychiatric Centre, as well as the coaches, vans and aircraft hired for the removal operation. Full access was given to all the information necessary for the delegation to carry out its task, including confidential operational and medical information, and the delegation was able to interview detainees in private[4].

5. Both the KMAR and the DT&V provided the CPT with extensive information as regards their respective roles and the procedures followed during the preparation and execution of this FRONTEX Joint Return Operation (JRO) by air. By way of example, the CPT received a copy of the relevant KMAR operational orders, the KMAR working instructions for the staff of the Repatriation Centre (and, in particular, the guidelines for escorts), and the legislation and regulations concerning the use of restraint by KMAR staff, as well as a full copy of the DT&V files of the five persons to be removed from the Netherlands. Furthermore, the delegation was provided with all the FRONTEX-related information necessary to carry out its task, such as the FRONTEX Implementation Plan (2013/ROS/32), the “Offer of a Return Flight”, etc. This enabled the delegation to obtain a clear advance picture of the whole removal process from the point of collection at Rotterdam Airport, via the stopover in Madrid to the point of final destination (Lagos - Nigeria).

6. It has been the CPT’s consistent policy, when monitoring a return operation by air, to observe the physical handover of the returnees to the local immigration/border police officials. This handover usually takes place on board (at the front door of the aircraft), in a dedicated space in the arrival hall at the airport, or sometimes on the tarmac. In this particular case, the physical handover of the returnees to the local authorities took place inside the aircraft.

This being said, in a more global perspective, the CPT would like to stress that, **when negotiating future readmission agreements and/or implementation protocols, an explicit reference should be made to the possibility for national or international monitoring bodies (such as the CPT) to observe removal operations to the country of destination, including the handover procedure to the local immigration authorities.**

Specific arrangements should be made, on an ad hoc basis, as regards readmission agreements already in force.[5]

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3 It should also be noted that the delegation benefited from exemplary cooperation from the four other national escort teams and the FRONTEX staff present on board.

4 As far as the security conditions could allow it, as regards interviews carried out on board the aircraft.

5 The same principles should apply vis-à-vis FRONTEX JROs.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preliminary remarks

7. At the outset, it should be recalled that the practice of the removal of foreign nationals by air ("return flights") is becoming ever more frequent and widespread throughout Europe; in the CPT's opinion, such operations entail a manifest risk of inhuman and degrading treatment (during preparations for the removal, during the actual flight or when the removal is aborted). Of course, **a State's fundamental obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment (i.e. the "non refoulement principle") must be kept in mind in this context**.

8. Since the beginning of its activities in the early 90s, the CPT has examined the treatment of persons deprived of their liberty under aliens' legislation, and this issue was dealt with in a section of the 7th General Report on the CPT's activities (CPT/Inf (97) 10, paragraphs 24 to 36). The CPT also set out in that report some basic rules concerning the use of force and means of restraint in the context of removal operations. In 2003, in its 13th General Report (CPT/Inf (2003) 35, paragraphs 27 to 45), the Committee set out more detailed guidelines concerning removal operations by air. Most of these guidelines were subsequently reflected in the "Twenty Guidelines on Forced Return" adopted by the Committee of Ministers of the Council of Europe in May 2005.

9. In October 2011, the CPT carried out its 5th periodic visit to the Netherlands. One of the objectives of this visit was to examine in depth the instructions and procedures followed on the ground as regards the removal of foreign nationals by air (CPT/Inf (2012) 21, paragraphs 74 to 84). In order to do so, the CPT carried out two short visits, respectively to the Rotterdam Detention Centre and the KMAR Repatriation Department at Schiphol Airport. The CPT gained a generally positive first impression of the professionalism of the KMAR staff involved in removal operations by air and formulated a few recommendations, which were subsequently partly implemented by the authorities of the Netherlands (CPT/Inf (2013) 22, paragraphs 56 to 60).

10. In December 2011, the President of the CPT sent a letter to all Parties to the Convention – including the Netherlands – seeking information on the removal operations that they organised. Information was requested concerning the legal framework and practical organisation of removal operations by air. The authorities of the Netherlands provided the requested information in due time and kept the CPT updated on return flight timetables throughout 2012 and early 2013.

11. In October 2012, the CPT decided to carry out its first monitoring mission of a removal operation by air; it concerned a return flight organised by the authorities of the United Kingdom[6] to Sri Lanka (CPT/Inf (2013) 14). The CPT subsequently decided to move to a more complex type of removal operation, namely a FRONTEX-coordinated and co-financed JRO by air.

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6 In practice, the operation was carried out by Reliance, a private company contracted by the United Kingdom Border Agency (UKBA).

12. In April 2013, three CPT representatives visited FRONTEX Headquarters in Warsaw in order for the CPT to become acquainted with the FRONTEX mandate and its procedures. Extensive information was provided to them, as well as provisional timetables of future JROs by air, later updated on a monthly basis. The CPT subsequently made several attempts to set up a monitoring operation (to Nigeria and to Ecuador and Colombia) and an opportunity to board a FRONTEX flight finally presented itself on 17 October 2013. It concerned a JRO organised by the authorities of the Netherlands to Lagos (Nigeria).[7] The DT&V "Offer of a Return Flight" was circulated within member States via the FRONTEX Joint Return Command Centre on 23 September 2013. "Participating Member States" had to express a "general interest" to FRONTEX by 5 October and a "concrete interest" to FRONTEX and the Organising Member State by 11 October 2013. The number of seats available on board for PMS was limited to 25. This offer also referred to a certain number of technicalities (such as the stopover in Madrid, the types of means of restraint authorised on board, and the presence of a FRONTEX TV crew on board[8]).

13. Removal operations by air to Nigeria are considered by many national authorities in Europe as among the most difficult return operations to be carried out (i.e. difficulties both before and during the flight, at disembarkation, etc.) This conclusion is in particular shared by many national escort teams in Europe and by the relevant independent monitors. The JRO organised by the Netherlands originally involved a total of 24 detainees, adult women and men,[9] and their 59 national escorts. The chartered aircraft was scheduled to leave Rotterdam Airport at 9.40 a.m. and finally left at 10.20 a.m., with seven detainees and 25 escorts on board.[10] Two representatives of DT&V, as well as two medical staff (one general practitioner and one psychiatric nurse), two observers/monitors (from the CITT and the IV&J) and a FRONTEX TV crew were also present. The remaining 11 detainees were boarded during the short stopover (1 p.m. to 2.30 p.m.) in Madrid, together with their 32 escorts.[11] The plane landed in Lagos at 7 p.m. and all the detainees were handed over to the local immigration/police authorities without significant difficulty. The aircraft took off again at 10.50 p.m., and landed in Amsterdam the following day at 7.30 a.m. (after a short stopover in Madrid).

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[7] It was the second FRONTEX flight organised by the Netherlands in 2013.

[8] The presence of the FRONTEX TV crew on board - for training purposes - had been allowed by the Dutch authorities, on strict conditions, in particular not to disclose the identity of the persons to be deported (i.e. the faces of persons to be deported had to be blurred when editing the video). See also in this regard article 10 (1) of the "Code of Conduct for Joint Return Operations coordinated by FRONTEX" of 7 October 2013.

[9] Children are expressly excluded from the repatriation agreement signed between the Netherlands and Nigeria.

[10] The Netherlands (five detainees, 19 KMAR escorts, one escort leader and one team leader), Germany (one detainee and three police escorts) and Slovenia (one detainee and three police escorts). A Dutch back-up team of 8 KMAR staff was also part of the JRO.

[11] Spain (nine detainees and 21 police escorts) and Bulgaria (two detainees and five police escorts).

B. Preparation for removal

14. The organisation of a removal operation by air involves numerous tasks of a legal, administrative, operational and logistical nature. These tasks are, at national level, divided between the DT&V – mostly responsible for the legal, administrative and logistical procedures – and the KMAR, which is responsible for the practical organisation of the removal operation. At KMAR level, three different teams are involved: the ground team, the flight team, and the back-up team. As already indicated (see paragraph 1), in this particular case, the organisation of the removal operation was rendered even more complex, as it involved several other FRONTEX PMS and the presence of a FRONTEX TV crew on board.

15. In practice, the persons to be deported from the Netherlands had been transferred to Rotterdam Detention Centre at least one week before departure (with the exception of F.M., who had been transferred to the Crisis Unit of Amsterdam Prison Psychiatric Centre). The delegation was satisfied that all the persons to be removed (as well as their lawyers) had been informed in due time - usually weeks, if not months, in advance - of the removal decision and the possibility to appeal it. The precise date of the removal to Nigeria had been provided at least 48 hours in advance, both in writing and orally, to the detainees and their lawyers by their respective DT&V repatriation supervisors.

As regards access to legal advice and avenues of legal recourse, the delegation noted that the detainees had kept regular contact with their lawyers throughout the whole detention period and as far the CPT could ascertain, none of the five detainees being removed from the Netherlands had lodged a last-minute application before departure, either at national or international level (i.e. the European Court of Human Rights). The delegation was however informed that no such access would be given as from the moment the deportation procedure started (i.e. the night before departure, when the detainees' mobile phones were taken away and placed in sealed plastic bags with their personal belongings to be looked after on board by the relevant escort staff). **The CPT recommends that such access be maintained until the moment of departure (i.e. until the moment the doors of the plane are closed).**

16. Furthermore, the CPT would like to recall that, until the moment of transfer of the person concerned to another State's jurisdiction (i.e. the physical handover to the local immigration officials of the country of destination), his/her lawyer/s are perfectly entitled to use any national or international legal recourse available to stop the removal. In practice, this implies that a last contact should be sought – after landing in the country of destination, but before disembarkation – between the DT&V representatives on board (or the KMAR escort leader) and their respective headquarters in the Netherlands, to verify whether a last judicial injunction has been issued by a national Court (or the European Court of Human Rights) during the flight, which would prevent a given deportee being disembarked. **The CPT recommends that steps be taken to ensure that such a "last call procedure" be put in place as regards removal operations by air organised by the authorities of the Netherlands.**

17. The delegation was also informed that, in very exceptional cases, the removal operation could be carried out without any prior notification of the person concerned of the precise time of the removal. Such exceptional procedures would be used vis-à-vis persons who were presenting a very high risk of self-harm (i.e. such persons are usually kept in isolation prior to their removal). The CPT would like to stress that leaving the person being removed unaware of his/her scheduled removal (and, in particular, his/her time of departure) can do more harm than good. Experience shows that instead of facilitating the process, it increases the risk of the person violently resisting the removal (and, in particular, resisting the application of means of restraint when being put under control in his/her cell). **Preparing the person concerned well in advance for his/her removal has proved in the long-term to be the most humane and efficient approach** (see also paragraph 23).

18. On 17 October (at 5.30. a.m.), two members of the delegation attended the training/rehearsal session organised for the KMAR "ground team" at the KMAR School. All KMAR ground staff were asked to review (through a PowerPoint presentation and a role play) the removal procedure, as well as the use of means of restraint (including the use of the so-called "French" body-belt) and the procedures for placing resisting detainees under control. This training included in particular professional techniques to protect the head of resisting detainees when they are put on the floor (on a mattress, to be body-cuffed) or when facing a wall (to be searched). The delegation was informed that such training sessions are organised before every charter removal flight. The CPT welcomes the KMAR's practice of organising rehearsal training sessions before every charter removal flight. This being said, the role-play sessions organised for KMAR ground staff also revealed that the ground staff concerned showed only rudimentary knowledge of how to handle difficult detainees through the use of appropriate communication skills. There was indeed a remarkable difference in this regard in comparison with the special escort team of the Transport and Support Department (DV&O) of the Ministry of Security and Justice that carried out the transfer of F.M. to Rotterdam Airport. In the light of the above, **efforts should be made by KMAR – through appropriate training – to develop further ground staff communication skills and facilitate thereby the handling of difficult detainees.**

19. At 6.30 a.m., the delegation followed the briefing of KMAR ground staff at Rotterdam Detention Centre. It was satisfied with the content of the briefing that included, in particular, a review of the procedure to be followed to transfer detainees from their cells to the aircraft. One hour later, the delegation observed the "standard" pick-up procedure followed as regards the four persons to be removed. Each time, a "French" body-belt was placed on the floor on a mattress, in front of the cell, before two Rotterdam Detention Centre staff members opened the cell door.[12] Between five and seven KMAR staff were involved in the subsequent steps (i.e. systematically informing the detainee of the purpose and details of the journey, asking them if they were ready to follow the escort without resistance, which all of them did; carrying out a thorough rub-down search,[13] looking in particular for blades with a metal detector; collecting the few remaining personal belongings and putting them in sealed plastic bags).[14]

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[12] This was the only task actually performed by Rotterdam Detention Centre staff members, apart from a check of the inside of the mouth of each detainee (the latter carried out at the request of the KMAR).

[13] The rub-down search was systematically performed by a male staff member of the KMAR (see CPT/Inf (2013), paragraph 78 and CPT/Inf (2013), paragraph 56).

[14] KMAR staff were attentive to any detail during the process (such as offering socks to a detainee who was wearing only slippers). They were also attentive to last-minute requests made by detainees concerning property (as this appears to be the most common complaint made by detainees during removal operations). Every detainee signed a form related to the transfer of property and received a copy thereof.

None of the four detainees being removed offered any resistance and no means of restraint were applied.[15] In the CPT's opinion, **the number of KMAR staff involved in the "standard" pick-up procedure that day appeared to be somewhat excessive** (certainly if compared with the three-man DV&O special escort team handling F. M., who had been categorised as an extremely high-risk transfer ("*extreem hoog risico transfer*")).

All the detainees were then taken one by one to another room, where they were asked to make a final check of their personal belongings which had been put in transparent bags the night before (in sealed bags with their photographs attached). **The CPT welcomes this advance procedure that made it possible to considerably shorten the waiting time (by a few hours) on the day of departure.**

The subsequent transfer to Rotterdam Airport facilities took place smoothly in a special transport van. It should be noted that throughout the whole "ground procedure", KMAR staff tried to keep the situation as calm as possible, defusing possible tensions and behaving discreetly.

20. The two other members of the delegation – including a forensic medical doctor – left Rotterdam on 17 October to monitor the collection of F.M. at the Crisis Unit of Amsterdam Prison Psychiatric Centre. On arrival there, at 5 a.m., the CPT representatives met the Director of the Prison Psychiatric Centre and the psychiatrist on duty. Detailed information was shared concerning F.M.'s mental state and pathology[16] and access given to his medical file. The delegation also met the DV&O special escort team which was in charge of the transfer of F.M. to Rotterdam on that day. The team leader organised a short briefing with the staff present (director, psychiatrist and nurses) and carried out a last inspection of F.M.'s bags. At 6.00 a.m., two nurses opened the cell door and the DV&O team leader entered the cell, waking up F.M. He did this very cautiously, explaining the details of the programme of the day, while F.M. was helped to dress. F.M. was then handcuffed (in front), placed in a wheelchair (with a belt attaching him to the chair, to prevent him from falling), and transferred to a special secure van. F.M. did not offer any physical resistance, but was constantly shaking and jiggling his head[17]. During the 30 minutes' transfer from Amsterdam to Rotterdam, F.M. was coughing, spitting, trembling, mumbling and breathing heavily. The DV&O team leader therefore decided to request that a medical examination be carried out on arrival at the Rotterdam Detention Centre. During the whole transfer, the DV&O special escort team (and, in particular, the team leader) showed a very high level of professionalism and competence, keeping up close contact and permanent dialogue with F.M. On arrival at the Rotterdam Detention Centre, F.M. was placed in a separate room, under the constant supervision of the DV&O team. The medical doctor and the psychiatric nurse joining the JRO were immediately called in to examine F.M. The psychiatric nurse subsequently stayed with F.M. until the moment of boarding (and sat next to him for some of the flight). To sum up, the collection and transfer of F.M. was carried out in a very professional way, the DV&O staff applying appropriate techniques and demonstrating excellent communication skills.

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[15] Rotterdam Detention Centre senior staff present indicated that they would not hesitate to intervene if they considered the level of force applied by the KMAR to be excessive (a situation which they said had never previously happened).

[16] The CPT delegation was informed that F.M. was not suffering from a psychiatric disease, but from a personality problem, "cluster B", and that since his arrival at the Crisis Unit, he had refused medication. F.M. had been checked every hour in his cell the night prior to his departure.

[17] The duty psychiatrist indicated that it was the first time that F.M. had displayed such behaviour since his arrival at the Crisis Unit the previous week.

The CPT, however, noted that no medical/nursing staff were present during the transfer from Amsterdam to Rotterdam (apart from the delegation's own forensic medical doctor, who stayed in the van next to F.M.). This is rather surprising, given the efforts made by the authorities to ensure medical/nursing coverage throughout the rest of the journey to Lagos. **The CPT recommends that this deficiency be remedied in future.**

21. The most difficult moment for F.M. (as well as for the DV&O and KMAR escort teams) was the moment of removal of means of restraint used by the DV&O and their replacement by the "French" body-belt that would be used during the journey to Lagos. This replacement took quite a long time, with many KMAR and DV&O staff involved, given that F.M. had to be completely immobilised (including the head) during the whole process. In the CPT's opinion, **far too many staff (including the FRONTEX TV crew) were present in the very small room while this replacement of the means of restraint was taking place**. Further, **this long and tiring procedure would have been unnecessary if the DV&O special escort team had been equipped with a "French" body-belt from the start.**

During the same operation, a diaper[18] was fastened on top of F.M.'s trousers with heavy adhesive tape and subsequently covered with a light, white overall. The CPT considers that placing a diaper above a person's trousers does not serve the purpose initially justifying its use and that this might even be considered as degrading for both the person concerned and the escort staff. **The CPT recommends that in future, in exceptional circumstances, when criteria justifying the use of a diaper are met, the diaper be placed in a correct manner (i.e. under the trousers).**

The subsequent transfer of F.M. to the aircraft occurred in the DV&O van, with the DV&O team, until the moment of handover to the KMAR back-up team (in the airport hangar).

22. The delegation also observed that during the transfer from their cells to the "luggage room", and from that room to the special coach, the detainees were systematically subjected to a form of "light control technique" (i.e. they were taken by the arms on both sides by a ground escort), even though they were in a secure area and were totally compliant. In the CPT's opinion, such indiscriminate use of a physical control technique is not justified and can raise tension unnecessarily. **The use of physical control and restraint techniques by escorts during ground transfer(s) should be justified in each case by an individual risk assessment**.

23. As already indicated, the KMAR ground staff were generally confident in their role and demonstrated a willingness to engage positively with the detainees (see, however, paragraph 18), thereby contributing to a safe and calm atmosphere during the handover and the subsequent transfer. However, a removal operation will always be a stressful experience for the persons concerned (as well as for the escort staff), and some of the detainees being removed showed signs of anxiety during the process. The delegation was informed that, during their stay at the Rotterdam Detention Centre, the detainees who wished to do so could have, on request, "stress reduction consultations" with the visiting psychiatrist and/or psychologist. Furthermore, the presence of a nursing/medical team on board seemed to reassure the persons being removed.

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18 The delegation examined very carefully the individual DV&O file of F.M (as well as the files of the four other persons deported by the Dutch authorities). The wearing of a diaper during the flight resulted from an individual risk-assessment carried out by the relevant authorities to which the delegation had access.

24. It is undisputed that for the most vulnerable detainees, a removal operation by air can be particularly traumatic. In order to ensure that the escorts act appropriately, a special procedure was in place, describing in detail the specific risk(s) related to their case (be they somatic or psychiatric, etc.). Information relating to the detainees' past criminal activities and security-related issues (troublesome or aggressive behaviour, etc.) was also readily available to every KMAR escort leader. The individual risk assessments were summarised on a special form (called "Form 118"), made available to the KMAR by the DT&V. Two or three such detainees were present on board and were treated with great care throughout the whole journey (by way of example, F.M.). He, however, remained body-cuffed for an extended period of time (from 6.10 a.m. to 3.45 p.m.), **a period which appears excessive for someone who was under constant and close surveillance by three experienced escorts throughout the whole journey to Lagos (see also paragraph 42).**

25. Another important issue for the CPT is the so-called "fit to fly" medical certification process for persons being forcibly removed by air. In its 2011 visit report (see CPT/Inf (2012) 21, paragraph 80), the CPT recommended that any foreign national being removed by air "be given the opportunity to be medically examined prior to the removal operation". It also recommended that "all foreign nationals who have been the subject of an abortive removal operation undergo a medical examination as soon as they are returned to detention". In their response (see CPT/Inf (2013) 22, paragraph 57), the authorities stressed the fact that "a medical screening is always conducted within 24 hours upon arrival in a detention centre" and that "if there are indications or if a previous procedure shows that there are medical problems, a fit to fly check will be performed". As regards the return to a detention centre after an aborted removal operation, the authorities indicated that "foreign nationals are referred to the medical service in the detention centre if there are indications of medical problems". The responses provided by the authorities of the Netherlands to the CPT's recommendations are not convincing.

26. As regards more precisely the removal operation to Lagos, the KMAR representatives explained that such a "fit to fly" medical certificate was only provided "on request, in a specific case" and that some "specific criteria" had been predefined (by them), imposing a medical examination in "special circumstances" such as in the case of pregnant women, suicidal behaviour, mobility limitations, heart problems, transmissible diseases, etc. The KMAR also informed the delegation that the Rotterdam Detention Centre would provide them in advance with a list of "problematic cases", where necessary. More generally, in the FRONTEX "Offer of a Return Flight" form circulated on 23 September 2013, the authorities of the Netherlands required "fit to fly clarification" for "medical cases".[19]

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[19] The recently adopted (7 October 2013) Code of Conduct for JROs coordinated by FRONTEX provides, in Article 7: "The returnees are to be removed only as long as they are 'fit-to-travel' at the time of the JRO. The Organising Member State must refuse the participation in a JRO of a returnee who is not fit-to-travel. In a reasonable time prior to the JRO, the authorities of the member States are required to provide a medical examination of a returnee, subject to his/her agreement, when he/she has a known medical condition or where medical treatment is required… ".

27. The CPT is ready to take into consideration the fact that, as with any incoming detainee, persons to be removed should undergo a medical examination within 24 hours of their arrival at the Rotterdam Detention Centre (or at the Crisis Unit as regards F.M.). However, recent experience shows that medical examination on admission in a detention centre – even in the Netherlands – might not be carried out with due attention (cf. the "Alexander *Dalmatov*" case).[20] Furthermore, the substance of the medical examination carried out on admission to a detention centre might well not cover the large amount of pathologies enumerated in the International Air Transport Association (IATA) flight inadmissibility criteria, or the need to specifically assess the risks associated with the possible prolonged use of means of restraint, in particular in confined spaces such as aircraft.[21]

In the CPT's opinion, the above-mentioned arguments fully justify – as a preventive precautionary measure – the principle that **every person being forcibly removed by air be given the opportunity to undergo a medical examination prior (i.e. a few days before) his/her departure.** Furthermore, **the CPT recommends that a medical examination of the person to be removed be systematically carried out whenever the prolonged use of force or means of restraint during the removal is expected or highly likely.**

In addition, **the CPT recommends that all persons returning to detention after an aborted removal operation undergo a medical examination upon admission to the detention centre**. In practice, such a person should be considered – and treated – like any other "newly admitted" detainee.

Finally, upon examination of the "fit-to-fly" medical forms for two of the persons to be removed from the Netherlands (F.M. and M.A.D.), the delegation noted two issues of concern: firstly, the medical doctor carrying out the IATA medical check-up might well have to do so without having seen the detainees' medical file (i.e. if the detainee concerned refuses access to his/her medical file) and, secondly, that the medical doctor carrying out the expert assessment is only identifiable with a code number. This raises issues, both in terms of possibility for the doctor concerned to appropriately assess the medical condition of the person to be removed, and regarding the possibility for the detainee to establish a proper doctor-patient relationship, based on mutual trust. **The CPT would like to receive the comments of the authorities of the Netherlands on these two remarks.**

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20 Alexander Dalmatov committed suicide at Rotterdam Detention Centre on 17 January 2013. The independent investigation subsequently carried out by the Ministry of Security and Justice Inspectorate revealed that he had not been seen by a doctor or a psychiatric nurse on arrival at the Centre and placed on suicide watch, although he had already committed another suicide attempt ("Het overlijden van Alexander Dolmatov", Inspectie Veiligheid en Justitie, Ministerie van Veiligheid en Justitie, 28 maart 2013).

21 See in particular : « Risques médicaux liés aux rapatriements sous contrainte de niveau 4 », Rapport d'expertise adressé à la Commission nationale pour la prévention de la torture suisse (CNPT), Mai 2013 (http://www.nkvf.admin.ch/content/dam/data/nkvf/berichte_2013/bericht_tf_ll_cnpt_2013-05-f.pdf).

28. As already indicated (cf. paragraph 13), a medical doctor and a psychiatric nurse were available throughout the whole journey from Rotterdam to Lagos. They were both contracted through the services of "*Forensisch Artsen Rotterdam-Rijnmond B.V.*", (FARR) a private organisation of forensic health professionals working for the police force in the Rotterdam-Rijnmond area, and reporting solely to FARR, which subsequently reported to the KMAR. In the present case, it was the first such removal operation by air for the medical doctor, whereas the psychiatric nurse had had considerable experience in removal flights. Both of them stated at the outset that they would act according to their professional ethics and agreed medical/nursing protocols. In particular, any treatment would only be administered with the informed consent of the patient concerned (except in life-threatening situations). They also indicated that in the event of need, they could always contact their headquarters on the ground via the cockpit, to receive specialist professional advice. It is to be noted that some of the persons being removed were under treatment and the necessary amount of medication had been placed in plastic bags and given to their escorts. A stock of two weeks' medication had been added, to prevent any interruption of treatment in the country of destination.

29. As regards the provision of adequate medical information,[22] both the medical doctor and the psychiatric nurse indicated that they had received some medical information concerning the patients concerned some weeks in advance, but that they would have liked to receive more information on the day of departure.[23] On the morning of departure and in the absence of medical/nursing staff at the Rotterdam Detention Centre, the medical doctor was given three envelopes, each of which contained medical information regarding persons to be deported by the Dutch authorities. In this regard, **the CPT considers that it would have been highly advisable for a Rotterdam Detention Centre health professional to be present on the morning of departure, to ensure the fast, smooth and adequate transfer of medical information to the medical team flying to Lagos (as well as to offer the possibility of responding to any last-minute questions they might wish to raise)**.

The CPT would also like to receive detailed information on the procedures followed during FRONTEX flights as regards the sharing of medical information relating to detainees removed by other PMS with the "Organising State" medical team.

30. To sum up, save the few points referred to above, each stage of the preparation of the removal process was carefully planned and organised, staff were well briefed, and every effort was made to ensure that the removal was carried out in a humane and dignified way.

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22 Access to medical information follows the same rule as for any patient in the Netherlands (i.e. medical professionals should receive formal authorisation from the patient to access his/her medical file). In the same context, it was explained to the delegation that persons to be removed could ask for a copy of their medical file in advance, if they so wished.

23 By way of example, the amount of information provided in advance to the psychiatric nurse made it somewhat difficult for him to identify the exact nature of the mental pathology of F.M.

C. Execution of the removal

31. On arrival in a hangar[24] at Rotterdam Airport (at 8.40 a.m.), detainees and escorts were required to remain in the coach/van for some time. Contact was made on the spot with the other national escort teams (Germany and Slovenia), as well as with other FRONTEX staff[25] who would board the aircraft. At this time, around a hundred persons were present in the hangar, creating some confusion. As from 9.20 a.m., detainees were transferred, one by one, by the KMAR back-up team to the aircraft, and handed over to their respective escorts who were already on board, following the seating plan agreed upon in advance for the Boeing 767-300 ER aircraft.[26] The back-up team used the same "light control technique" when boarding detainees, being particularly attentive when climbing the steps. As was the case at the Rotterdam Detention Centre, mattresses were ready (they had been placed on either side of the steps, with the "French" body-belts on top), in case any difficulties arose when boarding the aircraft. The principle followed by the KMAR head of operations was clear: "We show that we can use force, in order not to have to use it". In practice, only F.M. was wearing a "French" body-belt, while the Slovenian and German detainees were handcuffed (metal handcuffs, placed in front). The other (four) persons to be removed from the Netherlands were not restrained. The plane took off at 10.35 a.m.

32. The first flight segment concerned the route Rotterdam-Madrid. The conditions on board during that part of the journey can be described as generally good. The Dutch (and German) escorts made genuine efforts to reduce stress and relax the atmosphere by engaging in dialogue with their respective detainees.

One incident should, however, be highlighted, which concerned the person being removed from Slovenia and his escorts. The person concerned started to complain and shout loudly in the cabin, because he was kept under restraint while his co-detainee from Germany had had his handcuffs removed after the aircraft had reached its cruising altitude. The vehement reaction from the detainee did not encounter any other reaction from the Slovenian escort than "We will take off the handcuffs when you have calmed down". At 11.15 a.m., the detainee started to vomit and was taken to the toilets (still handcuffed in front). On his return, he refused to go back to his seat handcuffed, and was forced to do so by his Slovenian escorts. While doing so, the detainee banged his head against the overhead luggage bin and hurt himself on the forehead. Noticing the incident, the Dutch back-up team leader immediately intervened in a very professional manner, trying to calm him down, discussing the issue with the Slovenian escort leader (and warning him in particular that he should be attentive and take care that the detainee did not bang his head again, as well as agreeing on a time of release of the handcuffs). Furthermore, the Dutch back-up team leader called the medical doctor to tend the detainee and treat the wound. The handcuffs were finally removed after the airplane took off from Madrid (at 3.05 p.m.).

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24 For the first time, the whole boarding operation took place in a hangar at Rotterdam Airport which thus completely concealed the aircraft.

25 The FRONTEX TV crew was already filming at the Rotterdam Detention Centre in the early morning hours.

26 Each national escort team had a separate section in the aircraft, separated by empty rows, the medical and back-up teams being placed in the middle, and the operational management team at the front of the aircraft. The CPT delegation divided into two sub-groups (two members in the back, two members in the front, close to F.M.).

This relatively small incident clearly demonstrates how quickly a situation can spiral out of control aboard a deportation flight. The delegation was not in a position to determine whether the lack of an appropriate reaction by the Slovenian escorts found its roots in language-related problems, poor interpersonal communication skills or lack of appropriate training. Any of these three elements might well be the cause of the incident. **The CPT is of the opinion that the determined and skilful intervention of the Dutch back-up team leader prevented any further escalation of the problem and helped to resolve it in the most appropriate manner.**

This incident also shows how difficult it might be for the Organising State representatives (in this case, the Dutch back-up team leader, supported by his Escort Team Leader and the Head of Operations) to decide when to intervene, how to intervene, and, if necessary, to overrule a PMS Escort Team Leader's decision (as the ultimate responsibility would ultimately fall on the shoulders of the Organising State).[27]

Furthermore, it also demonstrates how difficult it might be to handle different national escort teams, each of which follow their own (national) rules regarding the use of means of restraint on the same FRONTEX flight. As already indicated, a prior agreement was sought from every PMS as concerns the type of restraint to be used on board, but that was all. In the CPT's opinion, **the time is now ripe for more in-depth discussions among FRONTEX State Parties on the subject of promoting more precise common rules on the use of means of restraint** (through a regular exchange of experience, the updating of the FRONTEX document entitled "Best Practices for the removal of illegally-present third-country nationals by air", Warsaw, 2009, and/or the organisation of common training sessions).

33. The material conditions on board were generally good. Food and beverage were served throughout the flight. Although access to a toilet was offered on a regular basis (except to F.M.), the door of the toilet was systematically left slightly open for security reasons. Staff, however, made efforts to reduce embarrassment to a minimum. **The CPT invites the authorities to reconsider their policy on this issue; decisions in relation to these matters should be based on an individual risk assessment.**

34. A few words should be added about the short stopover (1.15 p.m. to 2.40 p.m.) and the boarding of eleven detainees[28] in the cargo area of <u>Madrid Barajas International Airport.</u>[29] The persons being removed were met by members of the delegation in "Sala 4" of the airport building. They were all sitting, surrounded by their respective escorts (one male detainee being removed from Spain was already wearing a "French" body-belt). It should be noted that a mattress had been put on the floor in an adjacent room, with body-cuffs on top, ready to be used if a given detainee became uncooperative. The situation in "Sala 4" was peaceful and under control.

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27 In the event of a major incident on board, Council Decision (2004/573/EC) of 29 April 2004 entrusts the Head of Operations of the Organising State with "the operational command to restore order" "in close liaison with or under instruction of the flight captain".

28 Two detainees being removed from Bulgaria (who arrived in Madrid on a commercial flight at 9 a.m.) and nine detainees being removed from Spain (including two women).

29 In order for the CPT delegation to carry out its mandate on the Spanish territory, the Spanish authorities were notified of an ad hoc visit by the CPT a few days in advance. The very limited scope (both in geographical terms and timescale) of the visit was highlighted. The other Participating Member States were informed of the presence of a CPT delegation on board the aircraft in advance; FRONTEX headquarters were informed separately.

The eleven detainees were subsequently transferred one by one in a normal airport bus to the aircraft. Here again, the boarding was carried out by the Dutch back-up team, using the "light control technique". Two persons being removed from Bulgaria were not handcuffed at all during this procedure, while all the persons being removed from Spain (except the one wearing the body-belt) were restrained during transfer with a little cord (the minimum level of restraint permitted under Spanish regulations). The two female detainees were escorted by a male and a female Spanish escort, and one of the female detainees had to be carried on board by three escorts, as she was refusing to walk.[30] This particular detainee created some difficulties later on during the flight to Lagos (see paragraph 35). As was the case in Rotterdam, a large quantity of luggage was taken onto the flight. At 2.30 p.m., the aircraft took off to Lagos and the Spanish escorts removed the restraints once the cruising altitude had been reached.

35. Two small incidents occurred during the <u>second flight segment</u>. At the initial stage – and for approximately one hour – the female detainee who had been carried by force into the aircraft shouted and cried. One female Spanish escort spent considerable time speaking to her, calming her down. Nonetheless, the tension started to rise in the cabin – which could easily have degenerated into a rebellion of male compatriots (who were not under restraint at that time) and presented a clear security risk for the flight – if the intervention of the Spanish female escort had not been particularly skilful, empathetic and professional. The second incident took place shortly before landing, when F.M. started trembling, screaming and barking like a dog, and continued to do so in the presence of the Nigerian immigration officials who boarded the airplane for the handover procedure.

36. The medical doctor and the psychiatric nurse present on board were only asked to provide basic care during the flight (distribution of medication,[31] treatment of the wound of the detainee who banged his head on the luggage bin, etc.).[32] Both health-care professionals confirmed that the use of chemical restraint during removal operations was unethical and strictly prohibited by law. **The CPT welcomes this approach, which reflects the Committee's position on this issue**.

37. The medical member of the delegation checked the contents of the medical bag taken on board by the Dutch health-care team. Its content was very limited and in case of emergency, they could only rely on the oxygen bottle, the defibrillator and the little pharmacy available on board.

In the CPT's opinion, **health-care staff accompanying removal operations by charter flight should be systematically provided with a fully equipped emergency case (i.e. including a variety of medical equipment, as well as the medication most commonly used in emergency situations).**

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30 She was found with a razor during the rubdown search performed on her arrival in "Sala 4".

31 F.M. was given, with his consent, one painkiller (Diclofenac) and one light sedative (Diazepam 10 mg).

32 F.M. was not allowed to go to the toilets throughout the flight and was wearing a diaper above his trousers. At 3.45 p.m., the nurse gave him the possibility to urinate in a urinal. At that point, the "French" body-belt was removed (i.e. he was body-cuffed for nearly ten consecutive hours).

D. Handover to the Nigerian authorities and debriefing-related issues

38. Just before the descent into Lagos (at about 7.45 p.m.), the detainees were given back the plastic bags containing their personal belongings that had been kept in the cabin (mobile phones, identity documents, money, …), as well as, for those concerned, two weeks' supply of medication in order to ensure on-going treatment. For those who requested it, copies of administrative documents and medical notes were handed over. The five detainees removed from the Netherlands also received 50 euros each.

The aircraft landed at Lagos International Airport at around 8 p.m. and parked in the cargo area, far from the view of the rest of the airport facilities. A dozen Nigerian immigration/police officers came on board at 8.15 p.m., and started the immigration entry procedure with a short welcoming speech, asking for the detainees' cooperation. The speech was well received by most of the detainees, except for F.M. who continued to shout vehemently that he was a British citizen. After a while, the Head of the Nigerian Immigration Team succeeded in convincing F.M. to go through the immigration entry procedure. One by one, the detainees were registered by Nigerian officials, and subsequently disembarked.[33] All the detainees left the aircraft without resistance.

Particular care was taken of the two detainees who needed specialist medical attention on arrival. Prior arrangements had been made in this respect by the DT&V with the local health-care services, and two Nigerian medical teams were present upon the arrival of the aircraft. The DT&V representative on board contacted the relevant health officials and subsequently completed a report describing in detail the handover procedure to the local health authorities.

39. The disembarkation was finalised at 9.20 p.m. and shortly after, an extremely short debriefing session was organised by the Organising State Head of Operations at the front entrance of the aircraft (on the platform of the steps). All the national escort team leaders were present, as well as the FRONTEX co-ordinator. The aircraft took off for Madrid at 10.45 p.m. During the return flight to Madrid, every national escort team leader filled in a FRONTEX debriefing form, which was handed over to the FRONTEX representative via the Organising State's Head of Operations. As far as the CPT delegation could ascertain, no "internal" debriefing was carried out by the Dutch KMAR escort teams (or any escort team present on board) on the return journey.

40. The removal operation to Lagos was a long, intense and exhausting operation for the KMAR escort and back-up staff (as well as for the other national escort teams). However, this should not prevent <u>preliminary</u> debriefing sessions[34] from taking place, at both team and senior levels.[35] In the CPT's opinion, it is of critical importance that debriefing sessions be organised after such removal operations, for three main reasons.

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33 The KMAR Head of Operations informed the delegation that it was for the Nigerian officials to convince the detainees to leave the plane without resistance and that no steps (including use of force) would be taken on his side if a detainee refused to disembark.

34 More <u>in-depth</u> debriefings may be organised in the days following the return.

35 This basic principle is also valid for the other national escort teams present on board.

Firstly, such a debriefing is absolutely necessary for operational purposes (as is the case after any police or military operation), as it enables escort and back-up staff, team leaders and senior staff to identify weaknesses in procedures and tactics, possible staff mistakes or inappropriate responses to emergency situations, with the ultimate aim of carrying out removal operations in the most humane and effective way possible.

Secondly, operational debriefing exercises would enable senior staff to set up a database of problems/incidents and solutions that could be used during initial and on-going training. The information collected in the database could also, under certain conditions, be used not only at national level, but also at European level (for example, in the context of the revision of the 2009 "Best Practices" document on forced removals). More generally, this would guarantee that the considerable experience gained over the years by escorts, at both national and European levels, does not vanish with the departure of its most experienced members.

Thirdly, debriefings organised at team level would enable staff to share experiences and reduce tensions and stress, in particular if difficulties had been encountered during the removal operation (use of force by staff, self-harming detainees, etc.).

The CPT recommends that both preliminary (i.e. on board) and in-depth debriefing sessions be systematically organised after removal operations, both at team and senior levels, in the light of the above remarks.

E. Other issues related to the CPT's mandate

1. Use of force

41. The use of force and other means of restraint are one of the major issues at stake during removal operations by air and the CPT has already made recommendations on this matter (see paragraph 8). The KMAR operating instructions on the use of force and means of restraint were already described at length in a previous CPT visit report (see CPT/Inf (2012) 21, paragraph 77). To sum up, a limited list of means of restraint might be used to control persons to be removed, in specific circumstances, and precise instructions have to be followed. The authorised means of restraint included: steel handcuffs (to affix hands and/or feet); a belt combined with handcuffs to affix wrists in front of the body (a body-cuff), optionally combined with ankle straps; "Velcro" straps to affix hands and/or feet; tie wraps (synthetic strips to affix hands and/or feet); a light rigid helmet to prevent the deportee from injuring himself or others; and a facial screen to protect escort officers and/or passengers from biting and/or spitting[36]. Further, the KMAR operating instructions forbid bending the deportee forward to control him/her or to cover or tape his/her mouth, even where he is shouting or spitting. In addition, as already indicated (see paragraph 36), the forced administration of medication, such as tranquilisers, is strictly forbidden by the KMAR regulations.

42. The use of means of restraint is decided after an individualised assessment has been carried out by both the DT&V and KMAR, taking into account the previous behaviour of the person concerned and his/her actual state of mind and declared intentions. During the removal, the decision to apply or remove the means of restraint or use of force lies solely in the hands of a senior member of staff (at least an escort leader). Furthermore, if force/means of restraint have to be used, they will usually be applied by members of the back-up team[37] and not by the escorting officers accompanying each detainee, a principle that is welcomed by the CPT. Upon return, a special form[38] is systematically filled in, even it is only to mention that means of restraint or force have not been used. The subsequent consultation of the forms filled in after the JRO to Lagos showed that they were well completed (both at national and FRONTEX levels). As already indicated, only one person removed from the Netherlands was subjected to a restraint measure. However, this measure was applied for a very long time (nearly ten consecutive hours), **a length of time which appears under the circumstances excessive to the CPT** (see paragraph 24).

43. The wearing of identification tags by staff involved in removal operations is also an important safeguard against possible abuse. Although all escort and senior staff (KMAR and DT&V) were wearing fluorescent vests indicating their respective role[39], the delegation noted that the KMAR escort staff did not wear an identification tag on their civilian clothes. **The CPT recommends that all KMAR escort staff wear a visible identification tag that would make them easily identifiable (either by their name or an identification number).** It should be noted in this context that the KMAR regulations prohibit the wearing of masks during removal operations.

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36 It should be noted that the facial screen in use did not in any way obstruct the airways of the detainee.

37 The members of the back-up team are experienced escorts and certified instructors in restraint techniques.

38 "Meldingsformulier geweldsaanwending bij uitzettingen – artikel 23B Ambtsinstructie".

39 This was also the case for the members of the medical team, the national observers' team and the FRONTEX team.

2. Role of national monitoring bodies

44. In its 13th General Report (see CPT/Inf (2003) 35, paragraph 45), the CPT stressed the importance of the role to be played by monitoring systems in areas as sensitive as removal operations by air. Consequently, in its 2011 visit report (see CPT/nf (2012) 21, paragraph 81), the Committee welcomed the establishment - as early as of 2007 - of the Commission for the Integral Supervision of Return (CITT)[40]. Two CITT representatives[41] were involved in the monitoring of the removal operation to Lagos - on the ground, at Rotterdam Airport - and one of them boarded the flight to Nigeria. The CITT monitor was clearly identifiable to both staff and persons to be removed during the flight and made himself available, when needed. Towards the end of the flight, he intervened personnally when tension rose after one of the detainees removed from the Netherlands became agitated (claiming that part of his money had disappeared when the plastic bag containing his personal belongings was opened by his escort). The monitor's intervention, as well as that of the Dutch escort leader, quickly solved the problem. Upon return, the CITT monitor drafted a report which was given to the KMAR and subsequently incorporated in the FRONTEX final return operation form.

45. On 30 May 2013, the CITT published its fourty-page 2012 annual report. In this report, the President of the CITT highlighted in particular the need for the authorities to "pay special attention to the forced return of aliens with a medical history and mentally ill criminal aliens". He stressed that health-care staff accompanying removal operations by air sometimes missed essential information regarding the medical history of the aliens concerned (see also paragraph 29). He added in particular that privacy laws prevented medical information being disclosed to third parties without the consent of the person involved. He recommended nonetheless that basic medical information accompany the alien during transport to the airport and be made available to the staff responsible for the alien during the whole return process, to ensure the safety of the alien and the staff involved. In his response to Parliament ("Tweede Kamer", vergaderjaar 2012-2013, 19 637, N° 1673, 30 May 2013), the State Secretary for Security and Justice indicated that a protocol regulating the transfer of medical information would be drawn up by the DT&V, the health-care staff of the detention centers and the contracted external medical services. **The CPT would like to receive information on the results of this process**.

46. The CPT also took note that all CITT monitors take part, twice a year, in workshops organised with the responsible operational KMAR and DT&V staff. This practice is most welcome in the opinion of the CPT, as it makes it possible to exploit the results of the monitoring and amend, if necessary, the KMAR and DT&V working methods and return procedures.

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40 *Commissie Integraal Toezicht Terugkeer*, http://www.commissieterugkeer.nl/. In 2012, the CITT monitored a total of 31 return flights (of which 18 "boarding" monitoring and 13 "in flight" monitoring).

41 Two representatives of the Ministry of Security and Justice Inspectorate (IV&J) accompanied the CITT representatives that day, as the IV&J was to take over the monitoring of removal operations from the CITT as from 1 January 2014. Only one member of the IV&J boarded the flight.

47. As from 1 January 2014, the monitoring of removal operations by air will be carried out by members of the IV&J. **The CPT would like to receive detailed information on the mandate, the powers and the means assigned to the IV&J to fulfil this new monitoring mission.**

48. The CPT considers it essential that monitors be present at the very moment the door of the cell/room of the person to be removed is opened on the day of departure[42], as several deaths occurred in Europe at this initial moment of the removal procedure (i.e. when the person concerned had to be put under control in his/her cell and the means of restraint applied). Experience particularly shows that the very first contact between escorts and the person to be deported is crucial for the smooth running of any removal operation. Skilled escorts are usually able to initiate a genuine dialogue with the person to be removed, to respond any last queries or defuse any difficulties, to overcome resistance and, where necessary, to apply means of restraints in a professional way. The monitoring should continue until the moment the person concerned is physically handed over to the authorities of the country of destination. **The CPT recommends that these precepts be followed by the IV&J monitors when performing their new duties**.

3. Staff related issues

49. The proper conduct of removal operations by air depends to a large extent on the quality of the staff assigned to escort duties. Escort and back-up staff must be selected with the utmost care and receive appropriate, specific training designed to reduce the risk of ill-treatment to a minimum. The 500 KMAR staff (of whom 9 % are women) assigned to escort duties are all voluntary[43]. As already indicated (CPT/Inf (2012) 21, paragraph 75), to escort deportees on return flights, KMAR escorts should be at least 23 years old, follow a first four-week escort's course (both theorethical and practical), and successfully pass an exam. After one year of operation, escort officers can follow an additional four-week course to become escort leaders.

50. It is undisputable that overseas escort duties are stressful, intensive and tiring. Therefore, the CPT considers that the recruitment procedure of escorts should include some form of psychological assessment. Furthermore, once recruited, it is essential that measures be taken in order to avoid professional exhaustion syndrome and the risks related to routine, and to ensure that staff maintain a certain emotional distance from the operational activities in which they are involved. In this context, the CPT was pleased to note that care was taken that escorts rotate regularly[44] between escort and regular border control duties. **Regular team debriefings (see paragraph 40) also play a very important role in this context, as well as the provision, on request, of specialised psychological support to escort staff.**

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[42] The monitors (both CITT and IV&J) monitored the opening of the cell doors at Rotterdam Detention Centre, but not at the Crisis Unit of Amsterdam Prison.

[43] KMAR staff do not receive special financial reward or incentives for carrying out overseas escort duties.

[44] KMAR escort staff rotates following a two weeks escort's and four weeks border control duties scheme.

4. Complaint procedures

51. Since many years, the Netherlands have benefited from a rather sophisticated complaint system in all types of places of deprivation of liberty, including detention centres for foreigners. The delegation examined the accessibility and efficiency of the complaint system in place for persons subjected to a removal procedure by air.

As regards accessibility, a leaflet explaining how to deal with complaint[45], edited by the KMAR, was availbale in many foreign languages. Furthermore, the delegation observed that detainees removed from the Netherlands were able to submit complaints orally to both the head of the escort team and the Operational Commander during the whole journey (during the hand-over at Rotterdam Detention Centre, on the coach/van, during boarding or during the flight). Further, as already indicated (see paragraph 44), complaints could be made directly to the CITT representative(s), on the ground or in flight.

As regards efficiency, the KMAR Head of Operations informed the delegation that some 12 complaints had been received for removal operations by air in 2013 and that no disciplinary sanctions had to be taken following misbehaviour on a removal operation. **The CPT would like to receive detailed information on the complaints made in 2013 (substance, action taken, etc.).**

The CPT would also like to know if a similar complaint system is in place concerning DT&V and DV&O activities in the context of removal operations.

45 "U wilt een klacht indienen bij de Koninklijke Marechaussee".

APPENDIX

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Cooperation between the CPT and the authorities of the Netherlands

comments

- when negotiating future readmission agreements and/or implementation protocols, an explicit reference should be made to the possibility for national or international monitoring bodies (such as the CPT) to observe removal operations to the country of destination, including the handover procedure to the local immigration authorities. Specific arrangements should be made, on an ad hoc basis, as regards readmission agreements already in force; the same principles should apply vis-à-vis FRONTEX JROs (paragraph 6).

Preliminary remarks

comments

- a State's fundamental obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment (i.e. the "non refoulement principle") must be kept in mind in the context of the removal of foreign nationals by air ("return flights") (paragraph 7).

Preparation for removal

recommendations

- access to legal advice and avenues of legal recourse to be maintained until the moment of departure (i.e. until the moment the doors of the plane are closed) (paragraph 15);

- steps to be taken to ensure that a "last call procedure" be put in place as regards removal operations by air organised by the authorities of the Netherlands (paragraph 16);

- steps should be taken in future to ensure the presence of medical/nursing staff throughout the whole journey (i.e. from the point of collection to the point of final destination (paragraph 20);

- in exceptional circumstances, when criteria justifying the use of a diaper are met the diaper to be placed in a correct manner (i.e. under the trousers) (paragraph 21);

- the use of physical control and restraint techniques by escorts during ground transfer(s) to be justified in each case by an individual risk assessment (paragraph 22);

- a medical examination of the person to be removed be systematically carried out whenever the prolonged use of force or means of restraint during the removal is expected or highly likely (paragraph 27);

- all persons returning to detention after an aborted removal operation to undergo a medical examination upon admission to the detention centre (paragraph 27).

comments

- preparing the person to be removed from the Netherlands well in advance for his/her removal has proved in the long-term to be the most humane and efficient approach (see also paragraph 23) (paragraphs 17 and 23);

- efforts should be made by KMAR – through appropriate training – to develop further ground staff communication skills and facilitate thereby the handling of difficult detainees (paragraph 18);

- the number of KMAR staff involved in the "standard" pick-up procedure applied to four detainees to be removed on 17 October 2013 appeared to be somewhat excessive (paragraph 19);

- the CPT welcomes the advance procedure (personal belongings being collected the night before departure and put in transparent bags) that made it possible to considerably shorten the waiting time (by a few hours) on the day of departure (paragraph 19);

- far too many staff (including the FRONTEX TV crew) were present in the very small room while the replacement of the means of restraint was taking place (paragraph 21);

- the long and tiring procedure described in paragraph 21 would have been unnecessary if the DV&O special escort team had been equipped with a “French” body-belt from the start (paragraph 21);

- the extended period of time (from 6.10 a.m. to 3.45 p.m)., during which a detainee remained body-cuffed appears excessive for someone who was under constant and close surveillance by three experienced escorts throughout the whole journey to Lagos (paragraphs 24 and 42);

- every person being forcibly removed by air be given the opportunity to undergo a medical examination prior (i.e. a few days before) his/her departure (paragraph 27);

- it would have been highly advisable for a Rotterdam Detention Centre health-care professional to be present on the morning of departure, to ensure the fast, smooth and adequate transfer of medical information to the medical team flying to Lagos (as well as to offer the possibility of responding to any last-minute questions they might wish to raise) (paragraph 29).

requests of information

- the comments of the authorities of the Netherlands on the remarks concerning the possibility for the doctor to appropriately assess the medical condition of the person to be removed without having access to his/her medical file, and regarding the possibility for the detainee to establish a proper doctor-patient relationship, based on mutual trust, if the medical doctor is only identifiable with a code number (paragraph 27);

- detailed information on the procedures followed during FRONTEX flights as regards the sharing of medical information relating to detainees removed by other PMS with the "Organising State" medical team (paragraph 29).

Execution of the removal

comments

- the determined and skilful intervention of the Dutch back-up team leader during the incident on the first flight segment prevented any further escalation of the problem and helped to resolve it in the most appropriate manner (paragraph 32);

- the time is now ripe for more in-depth discussions among FRONTEX State Parties on the subject of promoting more precise common rules on the use of means of restraint (paragraph 32);

- the authorities are invited to reconsider their policy on keeping the door of the toilet systematically slightly open for security reasons when a detainee is complying with the needs of nature; decisions in relation to these matters should be based on an individual risk assessment (paragraph 33);

- the CPT welcomes the approach followed by the two health-care professionals, which reflects the Committee position that the use of chemical restraint during removal operations is unethical and strictly prohibited by law (paragraph 36);

- health-care staff accompanying removal operations by charter flight to be systematically provided with a fully equipped emergency case (i.e. including a variety of medical equipment, as well as the medication most commonly used in emergency situations) (paragraph 37).

Handover to the Nigerian authorities and debriefing-related issues

recommendations

- both preliminary (i.e. on board) and in-depth debriefing sessions to be systematically organised after removal operations, both at team and senior levels, in the light of the remarks in paragraph 40 (paragraph 40).

Other issues related to the CPT' mandate

Use of force

recommendations

- all KMAR escort staff to wear a visible identification tag that would make them easily identifiable (either by their name or an identification number) (paragraph 43).

Role of national monitoring bodies

recommendations

- the precepts detailled in paragraph 48 regarding the monitoring of a person to be removed to be followed by the IV&J monitors when performing their new duties (paragraph 48).

requests for information

- information on the protocol being drawn up by DT&V regulating the transfer of medical information the health-care staff of the detention centers and the contracted external medical services (paragraph 45);
- detailed information on the mandate, the powers and the means assigned to the IV&J in order to fulfil the new monitoring mission of removal operations by air (paragraph 47).

Staff related issues

comments

- regular team debriefings (see paragraph 40) also play a very important role in the context of the prevention of professional exhaustion syndrome and the risks related to routine, as well as the provision, on request, of specialised psychological support for staff (paragraph 50).

Complaint procedures

requests for information

- detailed information on the complaints made in 2013 (substance, action taken, etc.) regarding misbehaviour of KMAR escort staff during repatriation operations (paragraph 51);
- is a similar complaint system in place concerning DT&V and DV&O activities in the context of removal operations (paragraph 51).